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| <p>UNITED STATES OF AMERICA</p> <p>v.</p> <p>MOHAMMED KAMIN</p> | <p>GOVERNMENT REPLY</p> <p>TO DEFENSE RESPONSE TO P-001</p> <p>GOVERNMENT MOTION FOR</p> <p>APPROPRIATE RELIEF</p> <p>04 February 2009</p> |
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1. **Timeliness:** This reply motion is filed in accordance with the timelines specified by R.M.C. 905(b)(4) and the Military Commissions Trial Judiciary Rules of Court.

2. **Reply:** Pursuant to directives issued by the President and the Secretary of Defense, the Government filed a motion seeking to continue all proceedings in this case for a period of 120 days. The Defense has responded to the Government's motion. In their response, the Defense requests the commission to abate the proceedings. In the alternative, the Defense does not object to a continuance generally.

a. The Defense contends that the plain language of the Executive Order requires the charges be withdrawn and dismissed. The Government suggests a more careful interpretation of the two orders in light of the unique procedures of the Military Commissions Act and the unclear potential future course of this litigation. This Court has the authority under R.M.C 707 to continue any and all matters before it. The Government based its request for continuance on the "interests of justice," which, the Government submits, are served by allowing the President sufficient time to review the Military Commissions process. The continuance is in the interests of justice because it will allow sufficient time for a comprehensive review of the current process and prevent decisions and actions that may be inconsistent with future adopted procedures; and prevent potentially futile expenditure of resources. The Government is not arguing for an indeterminate delay; rather, the Government requests a continuance for a specified period to allow time for the comprehensive review ordered by the President.

b. The Government bases its request for continuance on the President's order that the commissions proceedings be suspended and the Secretary's directive to seek the 120-day continuance, both of them having their sole intent to permit the Administration's comprehensive review of the process. The Secretary's directive to the Chief Prosecutor identified a "continuance" as the means by which to execute the President's directive. In light of the specific terms used by the President and Secretary, it is clear both intended that no further proceedings be permitted while the Review continues.

c. The Defense argues that the Secretary of Defense can give effect to the Executive Order by withdrawing the charges from this Commission. While that is true, such a radical move is unnecessary when a continuance would permit all parties to continue to prepare their cases.

Moreover, should the Commissions process continue, all parties will be best positioned to continue with minimal delay. The Government's request to halt temporarily all proceedings in the interests of justice is sufficient to implement the President's directive.

d. The Defense argues that, if a continuance is granted on all matters, the Accused is left without a forum to address issues pertaining to this case. The Government respectfully submits that the requested continuance does not leave the Accused without a forum. The Government has requested only a temporary suspension of the proceedings, during which the parties may continue to engage short of actual proceedings. The Government anticipates continuing to provide unclassified discovery to the Defense during this time. Additionally, as counsel of record, the Defense can continue to visit his client, interview witnesses, and otherwise prepare his case. Once the continuance expires and the case resumes, the Defense will have an opportunity to raise all remaining issues to the Court. Withdrawal and dismissal of the charges will truly preclude Defense counsel from advocating any matters on behalf of his client.

e. In light of the fact that the ultimate forum in which this matter may be heard is unknown to all the parties in this case, the wisest and most conservative course of action - and one that is in the interests of justice - is to postpone all proceedings for 120 days. The Administration's review could result in this case continuing after 120 days. A continuance will allow the commission to be in the best position to proceed after the Administration's review is complete.

3. **Conclusion:** The Government has requested a continuance of all proceedings in this case. The Accused does not object to a continuance generally as an alternative to an abatement of the proceedings. Assuming the case is not abated, the Accused does not object to continuance of all other matters in the case, such as the filing of motions and the conduct of discovery. The Government submits that a 120-day continuance of all proceedings is justified under the circumstances and is consistent with both the President's Order. For these reasons, the Military Commission should grant a continuance of further proceedings in this case until 20 May 2009, and adopt the Findings of Fact, Conclusions of Law and Order as attached to the Government's Motion, P-001.

4. **Submitted by:**

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